

**LEX NEWSLETTER ZONE**

**Litigation Bytes**

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**Supreme Court of India Judgments**

**Limitation Period for Setting Aside Arbitration Award**

- Revathi Shivakumar, Associate.

The Supreme Court, in *Anilkumar Jinabhai Patel (D) v Pravinchandra Jinabhai Patel*, has clearly enumerated that the limitation period prescribed under Section 34(3) of the Arbitration and Conciliation Act would commence only from the date of the signed copy of the award being delivered to the party making the application for setting it aside.

The Court made this observation while referring to *State of Maharashtra and Ors v Ark Builders Pvt. Ltd*, wherein it was held that as Section 34(3) stipulates that "An application for setting

aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award", Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

The Court has further clarified that the expression "party making that application had received the arbitral award" should not be read in isolation and it must be understood that Section 31(5) of the Act requires a signed copy of the award to be delivered to each party.

**The Bengal Chemists Case**

- Ritika Khatua, Associate.

The Honourable Supreme Court of India in *Bengal Chemists and Druggist Association vs. Kalyan Chowdhury* threw light on the Section 421 and Section 433 of The Companies Act 2013.

In the present case, the Appellant had chosen an appeal before the NCLAT from an order of the NCLT at the preliminary stage. But, the appeal was filed after a delay of 9 days as the limitation period provided under Section 421(3) of the Companies Act 2013 had expired. Hence, the appeal stood dismissed by the NCLAT. Following this order of NCLAT, the

Appellant further preferred an appeal before the Hon'ble Supreme Court.

The Appellant relied upon Section 433 of the Companies Act and stated that Section 5 of the Limitation Act, 1963 would be applicable for condonation of delay beyond the period of 90 days provided under Section 421(3) of the Companies Act.

The Hon'ble Supreme Court has discussed the Section 421(3) and Section 433 of the Companies Act 2013 in detail. The language of the provisions was strictly interpreted before pronouncing the Judgment to support the principle that the right to appeal is not a natural or inherent right and is only a right provided by the statute.

It was hence observed that the Section 421(3) provides a limitation different from the provision provided under the Limitation Act, 1963. Since, Section 421(3) is a special provision so, Section 5 of the Limitation Act, 1963 being a general provision cannot be applied in the case.

The Division bench comprising of Justices R.F. Nariman and Navin Sinha held that under Section 421(3) of the Act, the limitation period to file an appeal from an order of NCLT is 45 days along with a further period not exceeding 45 days. Delay in filing an appeal beyond the period of 90 days will not be accepted.

However, the further period is granted only if a justified cause is found for filing the appeal within the extended period like if the Court is satisfied that the appellant was indeed restricted from filing the appeal within the period.

#### ✚ Six-month cap on stay in Civil/Criminal Proceedings.

-Revathi Shivakumar, Associate.

The Supreme Court, in *Asian Resurfacing of Road Agency Pvt. Ltd. VS. Central Bureau of Investigation* has held that the stay of proceedings granted in all pending cases, civil or criminal, will come to an end on the expiry of six months from the day when such stay was granted. It was further held that in exceptional cases, such stay can be extended only by the order of the Court. In cases, where a stay is granted in future, the same shall end on expiry of six months from the date of such order unless a similar extension has been granted by the court.

The Supreme Court further held that appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if the court finally finds no merit in the matter and the other side suffers loss and injustice. In cases where stay is granted, the matter should be taken on the day to day basis and concluded within two-three months. Where the matter remains pending for a longer period, the order of stay shall stand vacated on expiry of six months, unless an extension is granted by the Court showing extraordinary situation.

#### ✚ Union of India vs. Gopaldas Bhagwan Das.

- A. Surendar, Associate.

With the view that delays and laches may be a bar to challenge to the acquisition after 27 years, the bench in matter of *Union of India vs. Gopaldas Bhagwan Das*, has referred to a larger bench, the question: Whether the high court can entertain the plea challenging a land acquisition notification when there is a delay of decades.

In this case, the writ petition was filed by the landowners in 2002, challenging a land acquisition notification of the year 1975, on the ground that there was no due publication of the notification under Section 4 of the Act

which was a mandatory requirement. Their plea was upheld by the high court, relying on apex court judgment in *Kulsum R Nadiadwala vs. State of Maharashtra*.<sup>1</sup>

The court was of the view that the matter needs to be placed before a Bench of three Judges. Accordingly, the papers would be placed before Hon'ble the Chief Justice of India for appropriate directions.

#### ✚ Reiterating the Contours of Judicial Review.

- Revathi Shivakumar, Associate.

The Supreme Court, in *Municipal Corporation, Ujjain vs. BVG India Limited*, has summarised the scope of judicial review to the extent that unless the court concludes that the decision making process or the decision taken by the administrative authority is *malafide*, arbitrary, or the authority has intended to favour someone, the court will not interfere with the decision making process or the decision of administrative authorities, especially those relating to the acceptance of tender and award of contract.

The Supreme Court has laid down guidelines for the interference of High Courts in matters relating to technical bids and financial bids of the parties. It is not open to the court to independently evaluate unless the court is of the opinion that the act of the administrative authority is *malafide*, arbitrary, irrational or intentionally favours someone. The court should exercise judicial restraint.

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<sup>1</sup> (2012) 6 SCC 348.